IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.138 OF 1989

State of Maharashtra ...Appellant

Vs.

Shivram S/o Parsharam Mane ...Respondent

Mr. F.R.Shaikh A.P.P.
Respondent is served with the notice.

CORAM: SMT.RANJANA DESAI &
A.S.OKA,JJ.
DATE : OCTOBER 16, 2004.

ORAL JUDGMENT : **(PER ABHAY S.OKA,J.)**

1. By this appeal against acquittal the Appellant-State of Maharashtra has taken exception to the Judgment and Order dated 29th November 1988 passed by the Additional Sessions Judge, Sangli. By the impugned Judgment and Order, the Respondent-accused was acquitted of the offences punishable under Section 302, 304(B) and 498-A the of the Indian Penal Code.

2. The case of the prosecution is that on 21st February 1988 at about 9.30 p.m. the Respondent committed murder of his wife Mrs.Usha by pushing her in the well situated in the court yard of Marathi Boys' School at Hingangaon and thereby committed the offence punishable under Section 302 of Indian Penal Code (hereinafter referred to I.P.C.). The case of the

prosecution is that the Respondent-accused subjected his wife to cruelty and harassment from time to time from the date of her marriage till the date of death with a view to coerce her to meet his unlawful demand of a golden ring, cash amount and other valuables. Further allegation against the Respondent is that he subjected his wife to cruelty as she failed to meet his demands. In the alternative the Respondent-accused was charged with committing dowry death of his wife thereby committing an offence punishable under Section 304(B) of I.P.C.

3. The prosecution examined 11 witnesses. P.W.No.1 Sudhakar Janardan Mahamuni is the Panch witness to the inquest panchnama and the scene of offence panchnama. P.W.No.2 Pandurang Krishna Kadam is the alleged eye witness. P.W.No.3 Parshuram Krishna Jadhav is the complainant who is the father of deceased. P.W.No.4 Vishnu Bapu Dhamale also claims to be an eye witness. P.W.No.5 Vishnu Mahadeo Jadhav is the person who brought out the dead body of the deceased from the well. P.W.No.6-Suresh Jagannath Satam is the Panch witness to the panchnama at Exh.23 which records the recovery of certain letters which are articles No.14 and 15. P.W.No.7 Shahaji Shrirang Waidende is the rickshaw driver of the rickshaw which was hired by the accused for travelling up to Chinchani. P.W.No.8 Shankar Vithoba Ware is the Police Constable attached to Kadegaon Police station who arrested the accused. P.W.No.9 Khanderao Tulshiram Vidhate is the

Investigating Officer who carried out a part of the investigation. P.W.No.10-Chandrakant Keshav Pawar is the Deputy Superintendent of Police who took over further investigation.

4. Dr.Shaikh the learned A.P.P. submitted that the evidence of P.W.No.3 Parshuram as well as P.W.No.2 Pandurang and P.W.No.4 Vishnu clearly establishes the guilt of the accused ? He submitted that there was no cogent reason to discard the testimony of these three witness. He submitted that P.W.Nos.2 and 4 had seen the accused committing the offence by pushing his wife in the well. He submitted that there was no reason for P.W.No.2 to depose against the Respondent-accused. He submitted that the conduct of the Respondent as reflected from the version of the said three witnesses clearly prove that the demand was made by the Respondent-accused for clothes and gold ring. He submitted that when the Respondent was offered gift by his father-in-law in the marriage ceremony of youngest sister of the deceased, he refused to accept the same on the ground that the gold ring was not offered to him and tailoring charges for the clothes were not offered to him. He pointed out that the Respondent left the marriage pendol by asking his wife to accompany him. He was in drunk condition and was not in a position to ride the motor cycle. He submitted that P.W.No.2 Pandurang and P.W.No.4 Vishnu are the eye witnesses to the incident and their testimony proves the guilt of the

accused beyond reasonable doubt. None appeared for the Respondent though the Respondent is served.

5. In the light of the submissions which are made we will have to consider the evidence on record. On 21st February 1988 there was a marriage of the youngest daughter of the complainant-P.W.No.3 Parshuram and the accused had come to the marriage along with his wife and children. P.W.No.3 Parshuram is the father-in-law of the accused. The accused refused to accept the gifts tendered to him by saying that the clothes were not tailored and he was not offered a gold ring. He, therefore, left the pendol of marriage. He took his wife and children along with him. He tried to ride on his motor cycle but as he was in drunk condition, he fell down and therefore, he left his motor cycle there and took his wife and children by road. On the way to the village, near the school he pushed his wife into a well. The medical evidence shows that the deceased expired as a result of asphyxia due to drowning. The case of the accused is that in the marriage ceremony the other sons-in-law of the complainant were offered gifts and therefore the wife of the Respondent-accused had a quarrel with the father i.e. the complainant as she felt insulted that her husband was not called and given gifts. The further case of the accused is that he had a quarrel with the complainant when the complainant asked him as to why he had come to the marriage without invitation. When the accused was leaving the place

he was given a beating in the pendol and near the school by the complainant and his relatives. After seeing the beating given to the accused, his wife jumped into the well in protest. Considering the controversy involved in the appeal the only question which is to be decided is whether the accused had pushed his wife into the well.

6. The complainant described in his evidence the incident in the pendol of the marriage. He stated that the accused refused to accept the gift offered to him. He stated that when the gift was offered to the accused, he went to the extent of removing his clothes. He threw away the gift articles given to him. The relatives who were present in the pendol tried to persuade the accused. However, the accused asked his wife not to stay there and leave the pendol with him. He stated that the accused, his wife and children took a seat on the motor cycle. The accused started the motor cycle but as he was in a drunk condition, he fell down from the motor cycle. His wife became unconscious as a result of fall from the motor cycle. She regained consciousness at 9.00 p.m. when the accused asked her to accompany him and not to accept any gift. The complainant told the Respondent not to take his daughter alongwith him and suggested that they should leave next day morning. The Respondent-accused asked the complainant not to interfere. The Respondent took his wife and children with him by leaving his motor cycle there. Certain omissions have been brought on record. One

of the important omissions is regarding failure of the complainant to state before the police that after the fall from the motor cycle the deceased became unconscious in the pendol. The complainant admitted that he was not on talking terms with the Respondent and the Respondent had not attended the marriages of his other daughters. Thus, the relationship between the complainant and the accused was strained. It is also an admitted position that the bride i.e. the daughter of the complainant had been to the accused for one month prior to the marriage and she was properly treated by the accused. She was given a silver chain and clothes and was taken for a round to City of Mumbai by the accused. The complainant admitted that for the marriage ceremony the accused had brought two water barrels. P.W.No.2 Pandurang was also present at the time of marriage in the pendol. He deposed about the dispute which took place at the time of offering gifts to the accused. He however, did not depose about the incident of accused trying to leave the pendol by his motor cycle and his wife falling down from the motor cycle and becoming unconscious. He stated that at the time of the commission of offence he was sitting in the school and he saw the accused with a child with him. He stated that the accused held the arms of the deceased and pushed her into the well. He stated that he reached the well and started shouting when other persons gathered there. He stated that in the light of the torch the persons present were looking for the deceased in the well and after some time a petromax

lamp was brought. At that time, the body of the deceased could not be traced. P.W.No.4 Vishnu Dhamale was also present in the pendol of the marriage. He also stated that after the meals he was asked to sit in the nearby school. He stated that the lights were available there. While he was sitting in the school along with Pandurang and two others, he saw the accused passing near the school along with his wife and two children. He stated that he saw the accused pushing his wife into the well. For appreciating the evidence of these two witnesses it is necessary to refer to the map of the place of the offence on record at Exh.6. Both P.W.Nos.2 and 4 were sitting in a room bearing room No.2 of the school. The map disclosed that the distance between the room No.2 in the school and the well is 100 feet. The distance between the office and the well is 55 feet. There is an open ground between the school building and the well. Both the map and the scene of offence panchnama did not show any existence of lamp in between the ground and school building. From the evidence of P.W.No.2 it appears that there was no lamp post near the well and therefore he stated that the search was made by using a torch and later on a petromax lamp was called for search of the body. The incident has taken place after 9.00 p.m. The witnesses had deposed that there was a light inside the school. However, that does not mean that the ground in front of the school was lighted. Both the said witnesses have not deposed that they apprehended the accused, even after they saw the incident. It is very difficult to

believe that from the distance of 100 feet in the darkness of the night they could see the accused pushing his wife in the well.

7. It is also to be borne in mind that it is not the case of the complainant that there was any fight or quarrel between the accused and his wife. The quarrel was between the accused and the complainant. Even in the said quarrel, the wife appears to have taken the side of the Respondent. It is not the case of the complainant that the wife was reluctant to leave the pendol with accused. Apart from the fact that there was no direct evidence of the accused pushing his wife into the well, the absence of any evidence regarding any cruel treatment given by the Respondent to his wife in the past makes the prosecution story vulnerable. It is not proved that the Respondent was making any demand in the past to his wife. It is also not established that the Respondent was ill-treating his wife as the alleged demands made by the Respondent were not met. It is proved that one month before the incident the sister of the deceased who got married on the date of the incident happily stayed in the family of the accused. In fact the accused gave a gift to her and took her around the city of Bombay.

8. In this view of the matter it is very difficult to come to the conclusion that the guilt of the accused was proved beyond reasonable doubt. It must be kept in mind that this

appeal is against order of acquittal. Merely because some other view is possible to be taken on the basis of the evidence on record is no ground to interfere. It cannot be said that the view taken by the learned Sessions Judge is not a possible view on the basis of the evidence. In the circumstances, no interference is called for in the appeal against acquittal. Hence, the Appeal is dismissed with no order as to costs.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)